

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HECTOR GARCIA, JR.,
as Personal Representative to
the Estate of Hector Garcia,

Plaintiff,

V.

Cause No. 2:21-cv-00485-SMV/GJF

BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF DOÑA ANA,
CORIZON HEALTH, INC.,
WARDEN VINCE POKLUDA,
VERONICA SALAZAR,
CHRISTI BENNETT,
MELISSA GARICA,
GLADYS HERNANDEZ,
HEATHER BARELA,
EDUARDO BERUMEN,
MARIO MACIAS,
DAYMON RAMIREZ, and
BRIAN VALLE,

Defendants.

**DEFENDANT CORIZON HEALTH, INC.’S ORIGINAL ANSWER TO PLAINTIFF’S
AMENDED COMPLAINT**

Defendant Corizon Health, Inc. (“Defendant), by and through its counsel, Scott Hulse PC (Henry J. Paoli & Casey S. Stevenson) file this original answer to plaintiff’s amended complaint.

1. Defendant admits that the Court has jurisdiction over the subject matter of this action.
2. Defendant admits that venue is proper within Doña Ana County.
3. Defendant lacks knowledge or information as to the allegations in paragraph 3 of the amended complaint so it denies same.

4. Defendant lacks knowledge or information as to the allegations in paragraph 4 of the amended complaint so it denies same.

5. Defendant admits that Hector Garcia was incarcerated at the Doña Ana County Detention Center, but otherwise denies the allegations in paragraph 5 of the amended complaint.

6. Defendant lacks knowledge or information as the allegations in paragraph 6 of the amended complaint so it denies same.

7. Defendant lacks knowledge or information as to the allegations in paragraph 7 of the amended complaint so it denies same.

8. Defendant admits it is a corporation and that it is registered to do business in New Mexico, but otherwise denies the allegations in paragraph 8 of the amended complaint.

9. Defendant denies the allegations in paragraph 9 of the amended complaint.

10. Defendant lacks knowledge or information as to the allegations in paragraph 10 of the amended complaint so it denies same.

11. Defendant lacks knowledge or information as to the allegations in paragraph 11 of the amended complaint so it denies same.

12. Defendant lacks knowledge or information as to the allegations in paragraph 12 of the amended complaint so it denies same.

13. Defendant lacks knowledge or information as to the allegations in paragraph 13 of the amended complaint so it denies same.

14. Defendant admits that Veronica Salazar was employed by Defendant, but otherwise denies the allegations in paragraph 14 of the amended complaint.

15. Defendant denies the allegations in paragraph 15 of the amended complaint.

16. Defendant lacks knowledge or information as to the allegations in paragraph 16 of the amended complaint so it denies same.

17. Defendant admits that Gladys Hernandez was employed by Defendant, but otherwise denies the allegations in paragraph 17 of the amended complaint.

18. Defendant denies the allegations in paragraph 18 of the amended complaint.

19. Defendant lacks knowledge or information as to the allegations in paragraph 19 of the amended complaint so it denies same.

20. Defendant admits that Heather Barela was employed by Defendant, but otherwise denies the allegations in paragraph 20 of the amended complaint.

21. Defendant denies the allegations in paragraph 21 of the amended complaint.

22. Defendant lacks knowledge or information as to the allegations in paragraph 22 of the amended complaint so it denies same.

23. Defendant admits that Eduardo Berumen was employed by Defendant, but otherwise denies the allegations in paragraph 23 of the amended complaint.

24. Defendant denies the allegations in paragraph 24 of the amended complaint.

25. Defendant lacks knowledge or information as to the allegations in paragraph 25 of the amended complaint so it denies same.

26. Defendant admits that Melissa Garcia was employed by Defendant, but otherwise denies the allegations in paragraph 26 of the amended complaint so it denies same.

27. Defendant denies the allegations in paragraph 27 of the amended complaint.

28. Defendant lacks knowledge or information as to the allegations in paragraph 28 of the amended complaint so it denies same.

29. Defendant admits that Christi Bennett was employed by Defendant, but otherwise denies the allegations in paragraph 29 of the amended complaint.

30. Defendant denies the allegations in paragraph 30 of the amended complaint.

31. Defendant lacks knowledge or information as to the allegations in paragraph 31 of the amended complaint so it denies same.

32. Defendant lacks knowledge or information as to the allegations in paragraph 32 of the amended complaint so it denies same.

33. Defendant lacks knowledge or information as to the allegations in paragraph 33 of the amended complaint so it denies same.

34. Defendant lacks knowledge or information as to the allegations in paragraph 34 of the amended complaint so it denies same.

35. Defendant lacks knowledge or information as to the allegations in paragraph 35 of the amended complaint so it denies same.

36. Defendant lacks knowledge or information as to the allegations in paragraph 36 of the amended complaint so it denies same.

37. Defendant lacks knowledge or information as to the allegations in paragraph 37 of the amended complaint so it denies same.

38. Defendant lacks knowledge or information as to the allegations in paragraph 38 of the amended complaint so it denies same.

39. Defendant lacks knowledge or information as to the allegations in paragraph 39 of the amended complaint so it denies same.

40. Defendant lacks knowledge or information as to the allegations in paragraph 40 of

the amended complaint so it denies same.

41. Defendant lacks knowledge or information as to the allegations in paragraph 41 of the amended complaint so it denies same.

42. Defendant denies the allegations in paragraph 42 of the amended complaint.

43. Defendant denies the allegations in paragraph 43 of the amended complaint.

44. Defendant denies the allegations in paragraph 44 of the amended complaint.

45. Defendant denies the allegations in paragraph 45 of the amended complaint.

46. Defendant denies the allegations in paragraph 46 of the amended complaint.

47. Defendant denies the allegations in paragraph 47 of the amended complaint.

48. Defendant denies the allegations in paragraph 48 of the amended complaint.

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50. Defendant denies the allegations in paragraph 50 of the amended complaint.

51. Defendant denies the allegations in paragraph 51 of the amended complaint.

52. Defendant denies the allegations in paragraph 52 of the amended complaint.

53. Defendant denies the allegations in paragraph 53 of the amended complaint.

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160. Defendant denies the allegations in paragraph 160 of the amended complaint.
161. Defendant denies the allegations in paragraph 161 of the amended complaint.
162. Defendant denies the allegations in paragraph 162 of the amended complaint.
163. Paragraph 163 of the amended complaint contains legal conclusions, and Defendant denies the allegations in paragraph 163 of the amended complaint.
164. Defendant denies the allegations in paragraph 164 of the amended complaint.
165. Defendant denies the allegations in paragraph 165 of the amended complaint.
166. Defendant denies the allegations in paragraph 166 of the amended complaint.
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281. Defendant denies the allegations in paragraph 281 of the amended complaint.

282. Defendant denies the allegations in paragraph 282 of the amended complaint.

283. Defendant denies the allegations in paragraph 283 of the amended complaint.

284. Defendant denies the allegations in paragraph 284 of the amended complaint.

285. Defendant admits that it had a contract to provide medical care services, but otherwise denies the allegations in paragraph 285 of the amended complaint.

286. Paragraph 286 of the amended complaint contains a legal conclusion, and to the extent that legal conclusions are alleged, Defendant denies the allegations in paragraph 286 of the amended complaint.

287. Defendant denies the allegations in paragraph 287 of the amended complaint.

288. Defendant denies the allegations in paragraph 288 of the amended complaint.

289. Defendant denies the allegations in paragraph 289 of the amended complaint.

290. Defendant denies the allegations in paragraph 290 of the amended complaint.

291. Defendant denies the allegations in paragraph 291 of the amended complaint.

292. Defendant denies the allegations in paragraph 292 of the amended complaint.

293. Defendant denies the allegations in paragraph 293 of the amended complaint.

294. Defendant denies the allegations in paragraph 294 of the amended complaint.

295. Defendant denies the allegations in paragraph 295 of the amended complaint.

296. Defendant denies the allegations in paragraph 296 of the amended complaint.

297. Defendant denies the allegations in paragraph 297 of the amended complaint.

298. Defendant denies the allegations in paragraph 298 of the amended complaint.

- 299. Defendant denies the allegations in paragraph 299 of the amended complaint.
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- 321. Defendant denies the allegations in paragraph 321 of the amended complaint.
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- 342. Defendant denies the allegations in paragraph 342 of the amended complaint.

- 343. Defendant denies the allegations in paragraph 343 of the amended complaint.
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- 361. Defendant denies the allegations in paragraph 361 of the amended complaint.
- 362. Defendant denies the allegations in paragraph 362 of the amended complaint.
- 363. Defendant denies the allegations in paragraph 363 of the amended complaint.
- 364. Defendant denies the allegations in paragraph 364 of the amended complaint.

365. Defendant denies the allegations in paragraph 365 of the amended complaint.

366. Defendant denies the allegations in paragraph 366 of the amended complaint.

367. Defendant denies the allegations in paragraph 367 of the amended complaint.

368. Defendant denies the allegations in the Jury Demand/Prayer section of the amended complaint.

DEFENSES

369. Defendant asserts that the complaint fails to state a claim for which relief can be granted. FED. R. CIV. P. 12(b)(6). There is no viable deliberate indifference claim under 42 U.S.C. §1983 with respect to plaintiff's alleged disagreement with the extent of the medical care that was actually received from Defendant and its medical professionals.

370. Defendant invokes all limitations and caps contained in the New Mexico Tort Claims Act which bar or limit Plaintiff's negligence claim, to the extent applicable to Plaintiff's claims. NMSA §§ 41-4-1 – 41-4-30.

371. Defendant asserts that Plaintiff's claims are barred or must be limited in proportion to the comparative fault of Plaintiff, and any other parties or non-parties.

372. Defendant asserts that there is no unconstitutional policy/custom/practice identified in the complaint that will support imposing liability on Defendant under 42 U.S.C. § 1983.

373. Defendant asserts that it cannot be vicariously liable on any theory or claim brought by Plaintiff under 42 U.S.C. §1983.

374. Defendant invokes any and all limitations in the Prison Litigation Reform Act, 42 U.S.C. § 1997e, to the extent that this statute limits Plaintiff's claims.

375. Defendant asserts that Hector Garcia's medical expenses, if any, are not reasonable and necessary, nor related to the incident that is the subject of this lawsuit. Additionally, Defendant contests the extent and duration of the Plaintiff's alleged damages and injuries, if any.

376. Defendant asserts that Plaintiff's damages and injuries, if any, were caused, in whole or in part, by independent, contributing, and intervening causes, factors, injuries, disabilities, and conditions unrelated to any actions of Defendant, or any other party in this lawsuit. Defendant requests that the Court allow the trier-of-fact to determine the respective percentage of responsibility of any non-parties with respect to causing or contributing to cause the harm for which plaintiff seeks to recover damages. *Cf. Bartlett v. N.M. Welding Supply, Inc.*, 1982-NMCA-048, 98 N.M. 152, 646 P.2d 579.

377. With respect to the injuries and damages claimed, if any, Defendant contends that Hector Garcia suffered from conditions, illnesses, and injuries which existed before the incident for which Defendant is not liable.

378. Plaintiffs' damages, if any, were proximately and/or solely caused or produced, in whole or in part, by the independent, intervening, and/or superseding acts, omissions, negligence, fault, or one or more other third parties over which Defendant had no control and for which Defendant is not legally responsible.

379. The doctrine of avoidable consequences and/or mitigation of damages applies to Plaintiffs' alleged right of recovery, if any such right exists in this case.

380. To the extent that any punitive damages are sought by Plaintiff, Defendant asserts that it did not act with a culpable mental state that will justify an award of punitive damages.

381. Defendant asserts that the conditions, injuries, and other damages about which Plaintiff complains are the sole or proximate result of prior and/or subsequent incidents, occurrences, events, causes or developments unrelated to, and not caused by, Defendant.

382. To the extent that Plaintiff seeks punitive or exemplary damages, Defendant asserts all limitations concerning the ratio of compensatory to punitive or exemplary damages in order for punitive damages awards to satisfy the due process provisions of the Constitution. *See, e.g., State Farm Mut. Auto Ins. v. Campbell*, 538 U.S. 408 (2003).

383. Defendant asserts that the actions of its medical providers complied with and satisfied the appropriate standard of care.

384. To the extent that any of Plaintiff's claims against Defendant implicate the New Mexico Tort Claims Act, Defendant invokes the provisions and limitations in the New Mexico Tort Claims Act.

385. To the extent that any of Plaintiff's claims against Defendant implicate the New Mexico Medical Malpractice Act, Defendant invokes the provisions and limitations contained in the New Mexico Medical Malpractice Act. NMSA §§ 41-5-1—41-5-29.

386. To the extent that any of Plaintiff's claims against Defendant implicate the New Mexico Medical Malpractice Act, Plaintiff's damages in connection with his negligence claim, if any, are limited by the New Mexico Medical Malpractice Act. NMSA §41-5-6.

387. Defendant hereby asserts all limitations on pre-judgment and post-judgment interest that are contained in New Mexico law.

388. Defendant denies that it has vicarious liability for any acts of any independent contractors or independent licensed physicians who act as independent contractors.

389. Defendant denies that it can be liable for deliberate indifference premised on disagreements with the extent of the medical care/treatment that was provided to Plaintiff.

390. Defendant denies that any policy could have been a moving force behind any alleged constitutional violation for purposes of Plaintiff's claim under 42 U.S.C. § 1983.

391. Defendant asserts that it did not act with deliberate indifference.

392. Defendant cannot be held liable on a deliberate indifference claim based on a theory of *respondeat superior* or vicarious liability.

393. Defendant denies that any policies identified in the complaint are *per se* unconstitutional. Accordingly, Defendant cannot be held liable for deliberate indifference based on a single incident.

394. Defendant denies that it can be held liable for any hiring or training of any medical providers in connection with Plaintiff's claim under 42 U.S.C. §1983.

395. To the extent that such a claim is alleged, Defendant denies that Plaintiff can establish liability based on a failure to train as there is no policy that evidences deliberate indifference.

396. Defendant denies that any of its policy makers, if any, acted with deliberate indifference.

397. Defendant denies that any deliberate indifference can be premised on an alleged policy, custom, or practice that amounts to inaction.

398. To the extent that such a claim is alleged, Defendant denies that it can be held liable for deliberate indifference based on any alleged failure to train or supervise in that any alleged policy did not cause any alleged injury claimed by the Plaintiff.

399. Defendant denies that any single incident involving the Plaintiff can form the basis of a policy, custom, or practice claim against Defendant.

400. Defendant denies that Plaintiff can recover against Defendant on a deliberate indifference claim for failing to implement policies.

401. Defendant denies that it can be liable to Plaintiff for failing to provide systems or training when there is no allegation of deliberate indifference based on an unconstitutional policy, custom, or practice.

402. Defendants assert that Plaintiff's own negligence in failing to comply with medical advice and instructions may be a proximate or sole cause of Plaintiff's alleged damages or injuries, if any.

403. Defendants assert that Plaintiff failed to mitigate his alleged damages, if any, by failing to properly follow medical advice and instructions. Alternatively, Defendants assert that Plaintiff should have taken action to avoid, eliminate, or minimize his alleged injuries and damages and that Plaintiff is barred or limited in his right of recovery, if any such right exists, by the doctrine of avoidable consequences or mitigation of damages.

404. Defendant reserves the right to raise such further and additional defenses or claims as may be available upon facts to be developed in discovery.

WHEREFORE, having fully answered plaintiff's amended complaint, Defendant requests that plaintiff's amended complaint and the claims asserted by plaintiff be dismissed with prejudice, that Defendant recover its court costs, and that the Court provide such other and further relief to which this Defendant may show itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2021, a true and correct copy of this document was filed electronically through the e-filing system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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